

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JAMES E. JOHNSON, BRUCE MOORE and)
CHRISTOPHER RAY,)
)
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Plaintiffs,)
)
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vs.) No. 04-0963-CV-W-2-FJG
)
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UNITED STATES BEEF CORPORATION,)
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)
)
Defendant.)

ORDER

Currently pending before the Court is Defendant's Motion to Strike Plaintiffs' Expert Report and Exclude Testimony of Plaintiff's Expert (Doc. # 183) and Plaintiffs' Motion to Strike Defendant's Motion in Limine Filed Out of Time and in Violation of the Court's Order (Doc. # 186).

On September 29, 2006, the Court provisionally denied the Defendant's motion to strike Plaintiffs' expert and directed the parties to submit a schedule for the depositions of the expert witnesses and for filing Motions to Strike. On October 17, 2006, the parties deposed the expert witnesses. Defendant then filed the instant Motion to Strike. Plaintiffs in response, filed a Motion to Strike the defendant's Motion (Doc. # 186). Plaintiffs believe that the filing of the defendant's Motion to Strike was improper because it included additional reasons for excluding plaintiffs' expert. Plaintiffs respond that "essentially all of Defendant's exhibits go to the weight to be afforded to any expert's testimony and have no place at this time in this litigation. Should Plaintiffs have to respond to the Motion and exhibits, they will be forced to utilize substantial time and

effort of their expert to rebut the Defendant's position. Defendant's Motion is also a ploy to allow new and additional articles and information into evidence and which they want to use for expert testimony." (Plaintiffs' Motion to Strike p. 2).

The Court does not agree. The September 29, 2006 Order clearly anticipated that the Defendant would be filing another Motion to Strike after taking the deposition of Plaintiffs' expert witness, as evidenced by the fact that the Court requested the parties to provide a date for filing the Motions to Strike. The Court also did not place any limitations on the Motion to Strike, realizing that counsel may discover additional information during the depositions that they would like to include in the Motion to Strike. Therefore, the Court does not find that the defendant's Motion to Strike was improper or filed in violation of the Court's Order. Accordingly, the Court hereby **DENIES** plaintiffs' Motion to Strike Defendant's Motion in Limine (Doc. # 186).

Before ruling on defendant's Motion to Strike plaintiff's Expert Report and Exclude Testimony of Plaintiff's Expert, the Court would like a substantive response from plaintiffs. Accordingly, Plaintiffs are hereby **ORDERED** to respond to Defendant's Motion to Strike on or before **Thursday January 4, 2007**. Defendant may thereafter file Reply Suggestions within the time allowed under the local rule.

Date: December 20, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge